

MONTANA LEGISLATIVE HISTORY

Chapter 344 19 2001

Bill H _____ S 473

Original bill & history ☒ c

H. Committee on Human Services S. Committee on State Admin

Hearing Date(s) _____ c

Hearing Date(s) _____ c

_____ c

2/16 ☒ c

3/26 ☒ c

_____ c

_____ c

2/19 _____ c

Date Out 3/27 ☒ c

* House amendments included

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

	Transmitted to House		
3/03	Referred to State Administration		
3/23	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	10	7
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Not Concurred	44	55
3/30	Reconsidered Previous Action; Placed on 2nd Reading	53	46
	Died in Process		

SB 473 Introduced by Waterman

LC1624 Drafter: Fox

Revise Board of Visitors Laws

2/14	Introduced		
2/14	First Reading		
2/14	Referred to State Administration		
2/15	Fiscal Note Requested		
2/16	Hearing		
2/20	Fiscal Note Received		
2/20	Fiscal Note Signed		
2/20	Committee Executive Action--Bill Passed	8	0
2/20	Committee Report--Bill Passed		
2/20	Fiscal Note Printed		
2/22	2nd Reading Passed on Voice Vote	49	1
2/22	3rd Reading Passed	49	1
	Transmitted to House		
3/03	Referred to Human Services		
3/26	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	18	0
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred	98	0
3/31	3rd Reading Concurred	98	2
	Returned to Senate with Amendments		
4/05	2nd Reading House Amendments Concurred on Voice Vote	48	0
4/06	3rd Reading Passed as Amended by House	47	0
4/06	Sent to Enrolling		
4/09	Returned from Enrolling		
4/10	Signed by President		
4/10	Signed by Speaker		
4/12	Transmitted to Governor		
4/21	Signed by Governor		
4/21	Chapter Number Assigned		
	Chapter Number 344		
	Effective Date: 10/01/2001 - All Sections		

SB 474 Introduced by Grimes

LC1540 Drafter: B. Campbell

Revise Laws on Auto and Auto Glass Repair

2/14	Introduced		
2/14	First Reading		
2/14	Referred to Business and Labor		
2/17	Hearing		
2/19	Committee Executive Action--Bill Passed as Amended	9	0
2/19	Committee Report--Bill Passed as Amended		
2/21	2nd Reading Passed on Voice Vote	50	0
2/22	3rd Reading Passed	47	3
	Transmitted to House		
3/03	Referred to Business and Labor		

Sandra BILL NO. 473

1

2 INTRODUCED BY

(Primary Sponsor)

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATUTES RELATING TO THE MENTAL
5 DISABILITIES BOARD OF VISITORS; INCREASING THE MEMBERSHIP OF THE BOARD AND SPECIFYING
6 REQUIREMENTS FOR MEMBERSHIP; STAGGERING TERMS OF BOARD MEMBERS; REQUIRING THE
7 BOARD TO ADOPT FACILITY INSPECTION SCHEDULES; PROVIDING THAT BOARD INSPECTIONS MAY
8 NOT BE PRECLUDED BY OTHER LICENSING OR ACCREDITATION PROCESSES; PROHIBITING ABUSE AND
9 NEGLECT IN A MENTAL HEALTH FACILITY; PROVIDING FOR REPORTING AND INVESTIGATING
10 ALLEGATIONS OF ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTIONS
11 2-15-211 AND 53-21-104, MCA."

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 Section 1. Section 2-15-211, MCA, is amended to read:

16 "2-15-211. Mental disabilities board of visitors -- composition -- allocation. (1) The governor shall
17 appoint a mental disabilities board of visitors.

18 (2) (a) ~~The board shall consist of five six persons representing but not limited to consumers,~~
19 ~~doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons~~
20 ~~and at least one of whom must be a representative of an organization concerned with the care and welfare~~
21 ~~of the mentally ill and one representative of an organization concerned with the care and welfare of the~~
22 ~~mentally retarded or persons with developmental disabilities; who possess qualifications necessary to carry~~
23 ~~out the responsibilities of the board defined in 53-20-104 and 53-21-104.~~

24 (b) The members of the board must meet the following requirements:

25 (i) one person must possess skills, knowledge, and experience relative to the treatment and
26 welfare of adults with serious disabling mental illnesses;

27 (ii) one person must possess skills, knowledge, and experience relative to the treatment and
28 welfare of children with serious emotional disturbances;

29 (iii) one person must possess skills, knowledge, and experience relative to the treatment and
30 welfare of adults with developmental disabilities;

1 (iv) one person must be a consumer of mental health services or a family member of a consumer
2 of mental health services; and

3 (v) one person must be a consumer of developmental disabilities services or a family member of
4 a person with developmental disabilities.

5 (c) The members of the board must also meet the following requirements:

6 (i) at least one board member must be a professional person in the field of mental health
7 treatment;

8 (ii) at least one board member must be a professional person in the field of developmental
9 disabilities treatment; and

10 (iii) no more than three board members may be professional persons in the fields of mental health
11 treatment and developmental disabilities treatment.

12 (d) ~~No one may be a~~ A member of the board ~~who is~~ may not be a full-time agent or employee of

13 the department of public health and human services or a mental health facility affected by Title 53, chapter

14 20, part 1, and Title 53, chapter 21, part 1, except this prohibition does not affect any employee of a

15 state college or university.

16 (e) Board members serve for 2-year terms. The terms are staggered so that one-half of the terms
17 expire June 30 of each year.

18 (3) The mental disabilities board of visitors is attached to the governor for administrative purposes.

19 It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and

20 Title 53, chapter 21, part 1."

21

22 **Section 2.** Section 53-21-104, MCA, is amended to read:

23 **"53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an

24 independent board of inquiry and review ~~to assure that is responsible to ensure~~ that the treatment of all

25 persons either voluntarily or involuntarily admitted to a mental facility in Montana is humane ~~and decent,~~

26 is consistent with established clinical and other professional standards, and meets the requirements set

27 forth in this part.

28 (2) The board shall review all plans for experimental research involving persons admitted to a

29 mental health facility to ~~assure~~ ensure that ~~the~~ each research project is humane and not unduly hazardous

30 and that it complies with the principles of the statement on the use of human subjects for research of the

1 American association on mental deficiency and with the principles for research involving human subjects
2 required by the United States department of health, ~~education, and welfare~~ and human services. An
3 activity considered to be an experimental research project ~~involving and that involves a person or persons~~
4 admitted to a mental health facility affected by this part may not be commenced unless it is approved by
5 the mental disabilities board of visitors.

6 (3) (a) The board shall ~~at least annually~~ inspect every mental health facility ~~which is providing that~~
7 provides treatment ~~and or~~ evaluation to any person pursuant to this part. ~~The board shall inspect the~~
8 ~~physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and~~
9 ~~treatment areas. The board shall inquire concerning all treatment programs being implemented by the~~
10 ~~facility.~~

11 (b) The board shall annually establish a schedule for the inspection of mental health facilities that
12 enables the board to meet its obligation under subsection (1).

13 (c) The board's authority to inspect mental health facilities may not be waived or precluded by
14 other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the
15 prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

16 (d) The board shall produce a written report of each inspection of a mental health facility that must
17 include specific recommendations for improvements that the board concludes are necessary in order for
18 the inspected facility to meet the requirements in this part.

19 (e) The board shall provide a draft of each written report to the professional person in charge of
20 the inspected facility for review prior to publication.

21 (f) The professional person in charge of the inspected facility shall provide a written response to
22 the board's written report within 30 calendar days of receipt of the report. The response must include one
23 of the following for each recommendation:

24 (i) a specific plan for implementation of the recommended action; or

25 (ii) a specific rationale that explains why the recommendation cannot be implemented.

26 (g) The board shall include the inspected facility's written response in the board's final published
27 written report.

28 (h) The board shall include in subsequent inspections an assessment of each facility's
29 implementation of the recommendations.

30 (i) The board shall report in writing to the director of the department and the governor when it

1 determines that a mental health facility has not implemented written recommendations.

2 (4) (a) The board shall annually insure, by applying a sampling process during a scheduled
3 inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists and
4 is being implemented for each patient admitted or committed to a the mental health facility being inspected
5 under this part.

6 (b) The board shall inquire concerning all, during a scheduled inspection of a mental health facility,
7 shall review the use of special treatment procedures, including but not limited to the use of mechanical
8 restraints, isolation, or other extraordinary measures: locked and unlocked seclusion, time out, or any other
9 procedure involving physical control.

10 (c) The board shall ensure that the use of special treatment procedures at inspected mental health
11 facilities is clinically justified, is monitored closely by a medical doctor and other mental health
12 professionals, is implemented only when other less restrictive measures have failed, and is implemented
13 to the least extent necessary to protect the safety and health of the affected individual or others in the
14 immediate environment.

15 (d) The board may exercise the prerogative to inquire about and ensure the existence and
16 implementation of treatment plans and discharge plans for any person admitted to a mental health facility
17 and to inquire about and ensure the appropriate use of special treatment procedures with any person
18 admitted to a mental health facility independent of its facility inspection schedule.

19 (5) The board may assist any ~~patient~~ person who is receiving or who has received treatment at
20 a mental health facility in resolving any grievance the patient person may have concerning the patient's
21 commitment person's admission or course of treatment in the facility.

22 (6) The board shall employ and ~~be~~ is responsible for full-time legal counsel at the state hospital,
23 whose responsibility is to act on behalf of all patients at the ~~institution~~ state hospital. The board shall
24 ~~insure~~ ensure that there ~~is~~ are sufficient legal staff and facilities to ~~insure~~ ensure availability to all patients
25 and shall require that the appointed counsel periodically interview every patient and examine the patient's
26 files and records. The board may employ additional legal counsel for representation of patients in a similar
27 manner at any other mental health facility having inpatient capability.

28 (7) (a) If the board believes that any facility is failing to comply with the provisions of this part
29 in regard to its physical facilities or its treatment of any patient person, it shall report its findings at once
30 in writing to the professional person in charge of the facility and the director of the department, and if

1 ~~appropriate, after waiting a reasonable time for a response from the professional person,~~

2 (b) The professional person in charge of the facility shall submit a written response to the board
3 within 10 working days that includes a specific plan to implement corrective action.

4 (c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working
5 days of the written notice provided for in subsection (7)(a), the board ~~may~~ shall notify the next of kin or
6 guardian of any ~~patient~~ person involved, the friend of respondent appointed by the court for any ~~patient~~
7 person involved, ~~and~~ the district court ~~which~~ that has jurisdiction over the facility, and the governor.

8 (8) The board shall report annually to the governor concerning:

9 (a) the status of the mental health facilities and treatment programs ~~which~~ that it has inspected
10 since the last annual report; and

11 (b) occurrences of the administration of medications ~~involuntarily administered to patients against~~
12 the wishes of persons receiving treatment in mental health facilities and the effectiveness of the review
13 procedure required by 53-21-127(2) in protecting ~~patients~~ persons from unnecessary or excessive
14 medication."

15

16 NEW SECTION. Section 3. Abuse and neglect of persons admitted to mental health facility
17 prohibited -- reporting -- investigations. (1) Any form of mistreatment, neglect, or abuse of a person
18 admitted to a mental health facility is prohibited.

19 (2) Each allegation of mistreatment, abuse, or neglect must be reported as follows:

20 (a) Any employee of the mental health facility with knowledge of the allegation shall immediately
21 report the allegation to the professional person in charge of the facility.

22 (b) The professional person in charge of the mental health facility shall report the allegation within
23 24 hours, in writing, to the board.

24 (c) When the allegation of mistreatment, abuse, or neglect may constitute a criminal act, the
25 professional person in charge of the mental health facility shall immediately report the allegation to the
26 appropriate law enforcement authority.

27 (3) Each mental health facility shall provide a mechanism for reporting allegations of mistreatment,
28 abuse, or neglect that in no way deters or discourages an individual from reporting the allegations.

29 (4) Investigations of allegations of mistreatment, abuse, or neglect must be initiated by the
30 professional person in charge of the facility within 24 hours of the initial report of the incident. However,

1 the investigation must be initiated immediately when there is a report of an alleged criminal act.

2 (5) The investigation of each allegation of mistreatment, abuse, or neglect must be concluded
3 within 10 working days of the initial report of the allegation.

4 (6) Each mental health facility shall document the following in writing regarding each allegation
5 of mistreatment, abuse, or neglect:

6 (a) details of each allegation of mistreatment, abuse, or neglect, including the names of any facility
7 staff against whom the allegation is made;

8 (b) a description of the rationale for conducting the investigation with either in-house or outside
9 personnel;

10 (c) details of the process of the investigation of each allegation of mistreatment, abuse, or neglect;

11 (d) details of the conclusions of the investigation; and

12 (e) details of corrective action taken.

13 (7) Mental health facilities shall provide a copy of the written report described in subsections (6)(a)
14 through (6)(e) within 5 working days of the completion of each investigation to the director of the
15 department and to the board.

16

17 NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an
18 integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to
19 [section 3].

20

- END -

FISCAL NOTE

Bill #: SB 473

Title: Revise Board of Visitors laws

Primary Sponsor: Mignon Waterman

Status: As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Governor's Office

1. The bill adds one member to the Board of Visitors, clarifies their duties, and limits the term of board members. The board can absorb the cost of the additional member within their current budget. There will be no fiscal impact.

Department of Public Health and Human Services

2. The bill would change the current time lines for Montana State Hospital to complete and report on investigations of abuse and neglect at the facility.
3. The hospital can absorb the impacts of this change in time lines within the current budget. There will be no fiscal impact.

2001 MONTANA LEGISLATURE - 57th Regular Session
INDEX TO BILLS IN COMMITTEE
- Committee: (S) State Administration -

- SB 468** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Extend appointing power of governor to deputy directors, division administrators
 REFERRED ON: 03/02/2001
 FINAL DISPOSITION: 03/29/2001 (S) Missed Deadline for Revenue Bill Transmittal
-
- SB 472** **SPONSOR:** Grosfield, Lorents **SHORT TITLE:** Revise laws governing ballot issues
 REFERRED ON: 02/14/2001 **HEARD ON:** 02/19/2001
 EXECUTIVE ACTION: 02/20/2001 - Bill Passed as Amended -- VOTE: 5 - 3
 FINAL DISPOSITION: 04/26/2001 (H) Died in Process
-
- SB 473** **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Revise Board of Visitors laws
 REFERRED ON: 02/14/2001 **HEARD ON:** 02/16/2001
 EXECUTIVE ACTION: 02/20/2001 - Bill Passed -- VOTE: 8 - 0
 FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned
-
- SJ 5** **SPONSOR:** Roush, Glenn **SHORT TITLE:** Study veterans' issues
 BY REQUEST OF: State Administration, Public Retirement Systems, And Veterans' Affairs Interim C
 REFERRED ON: 01/04/2001 **HEARD ON:** 01/11/2001
 EXECUTIVE ACTION: 01/12/2001 - Bill Passed -- VOTE: 8 - 0
 FINAL DISPOSITION: 03/08/2001 (S) Filed with Secretary of State
-
- SJ 9** **SPONSOR:** Cocchiarella, Vicki **SHORT TITLE:** Resolution on 20th anniversary of sister state relationship with Kumamoto
 REFERRED ON: 01/26/2001 **HEARD ON:** 02/06/2001
 EXECUTIVE ACTION: 02/07/2001 - Bill Passed as Amended -- VOTE: 8 - 0
 FINAL DISPOSITION: 04/11/2001 (S) Filed with Secretary of State
-
- SJ 12** **SPONSOR:** Beck, Tom **SHORT TITLE:** Authorize permanent placement of busts, statues, memorials in Capitol
 REFERRED ON: 02/07/2001 **HEARD ON:** 02/16/2001
 EXECUTIVE ACTION: 02/20/2001 - Bill Passed -- VOTE: 8 - 0
 FINAL DISPOSITION: 04/13/2001 (S) Filed with Secretary of State
-
- SJ 14** **SPONSOR:** Franklin, Eve **SHORT TITLE:** Urge establishing public service obligation for 18-year-olds
 REFERRED ON: 02/10/2001 **HEARD ON:** 02/13/2001
 EXECUTIVE ACTION: 02/13/2001 - Bill Passed -- VOTE: 8 - 0
 FINAL DISPOSITION: 04/26/2001 (H) Died in Standing Committee
-

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on February 16, 2001 at 10:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Pete Ekegren (R)
Sen. Jim Elliott (D)
Sen. Eve Franklin (D)
Sen. Ken Toole (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJ 12, SB 473, 2/5/2001
Executive Action: SB 362, HJ 4, HB 311, SB 443

HEARING ON SJ 12

Sponsor: SEN. TOM BECK, SD 28, Deer Lodge

Proponents: Bill Bayless, Administrative General Services
Division
Arnold Olsen, Montana Historical Society

Opponents: None

EXECUTIVE ACTION ON HJ 4

Motion/Vote: SEN. HARGROVE moved that HJ 4 BE ADOPTED. Motion carried unanimously.

HEARING ON SB 473

Sponsor: SEN. MIGNON WATERMAN, SD 26, Helena

Proponents: Gene Haire, Board of Visitors
Jeff Folsom, representing himself

Opponents: None

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, stated this bill made revisions to the statutes concerning the Board of Visitors, expanding the board from five to six members, defined who the members were, and sets staggered terms for two years. This bill would also require the facilities to respond to the Board of Visitors recommendations. SEN. WATERMAN said this would prohibit abuse and neglect of people in mental health facilities.

Proponents' Testimony:

Gene Haire, Board of Visitors, expressed support for this bill.

Jeff Folsom, representing himself, told the committee it was important to have a strong oversight of the mental health system. This bill would provide the structure for the that, he said.

Jeff Folsom said this bill would require more resources. He would like an amendment on Section 1 which described the powers of the board.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. FRANKLIN asked Gene Haire to explain the change in the role of the Board of Visitors. Gene Haire answered that the current law required every mental health facility to be inspected annually by the Board of Visitors, whereas this bill would still

require the inspections of the facilities, but not necessarily annually. He told the committee that this bill would establish the expectations of the Board of Visitors and would also establish priority in review. **Gene Haire** said this bill would require the facilities to respond to the Board of Visitors and to describe how they would go about facilitating the recommended changes.

SEN. BOHLINGER asked **Gene Haire** to tell the committee the location of these facilities and how many people presently received care from those facilities. **Gene Haire** answered that the definition included all of the community mental health center programs, and two state facilities. He added that the total number of people who received services from the community mental health centers would be approximately 6,000, reminding the committee that included all of the residential treatment programs also. **Gene Haire** said there were probably close to 10,000 total people served by mental health facilities throughout the state.

SEN. BOHLINGER asked **Gene Haire** what they did when performing site reviews. **Gene Haire** responded that the facility was given a month's notice before the site review. During the site review, the Board of Visitors would interview a variety of people, such as family members, agencies involved, such as pharmacists and physicians, about key issues. **Gene Haire** said they paid close attention to treatment planning and special treatment procedures.

SEN. BOHLINGER asked **Gene Haire** how often the person receiving the treatment was included in discussions. **Gene Haire** answered in adult facilities, they place a very high priority on interviewing the person receiving the treatment which provided them with valuable feed-back.

SEN. ELLIOTT asked **Gene Haire** if the permanent custodial care facilities were evaluated any differently than the other sites. **Gene Haire** replied that most of the people who were at the Montana State hospital had a diagnosis of either schizophrenia, bi-polar disorder, major depression, or serious personality disorder. Many of those people also had a chemical dependency problem. **Gene Haire** added that people at the facility at Lewistown diagnostically had similar profiles, with most of the people being elderly and, therefore, had some problems with dementia also. He added that since Lewistown was mostly custodial care, they routinely reviewed what the administrators and others list as the status, and the number of people who were under their care. **Gene Haire** stated that they paid closer attention to their care because those consumers were less able to communicate with the Board of Visitors.

SEN. ELLIOTT asked **Gene Haire** about developmental disabilities. **Gene Haire** responded that the Board of Visitors had a responsibility to do oversight at the two state residential facilities at Boulder and Glendive. He added that there were more people in those facilities who either the family or the state had a custodial responsibility at Glendive, with there being more of a mix at Glendive.

SEN. ELLIOTT asked **Gene Haire** what types of developmental disabilities were in those facilities. **Gene Haire** answered that less than 10% were Down Syndrome with the rest of the developmental disabilities caused from a large variety of reasons.

SEN. FRANKLIN asked **Gene Haire** what they do presently if they suspected abuse. **Gene Haire** answered that each facility had an internal policy in place. **Mr. Haire** said the Board of Visitors was very much involved in reviewing the processes for this and rely on the facilities to notify them if there was any suspected abuse.

SEN. FRANKLIN asked **Gene Haire** about medications against the wishes of the patient. **Gene Haire** answered that section was simply put in the bill to be grammatically correct and it did not change anything procedures already in place.

SEN. FRANKLIN asked **Gene Haire** if longer than 30 days should be allowed for a written report to be completed. **Gene Haire** said their intent was to put a time frame in place.

SEN. HARGROVE asked **Gene Haire** how often facilities failed to comply. **Gene Haire** answered the almost all facilities complied.

SEN. HARGROVE asked **Gene Haire** if they ever go to court. **Gene Haire** answered the strongly prefer not to go to court. He added that they pursue every other option first.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Closing by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena closed SB 473.

EXECUTIVE ACTION ON HB 311

Motion: **SEN. FRANKLIN** moved that **HB 311 BE CONCURRED IN.**

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN DON HARGROVE**, on February 19, 2001 at 3:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Pete Ekegren (R)
Sen. Jim Elliott (D)
Sen. Eve Franklin (D)
Sen. Ken Toole (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: SJ 12, SB 473, SB 453, SB 397,
SB 396, SB 395, SB 472

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SJ 12

Motion/Vote: SEN. ELLIOTT moved that SJ12 BE ADOPTED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 473

Motion/Vote: SEN. EKEGREN moved that SB 473 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 453

Motion/Vote: SEN. EKEGREN moved that SB 453 DO PASS. Motion failed 3-5.

EXECUTIVE ACTION ON SB 397

Discussion:

SEN. JIM ELLIOTT was concerned that these bills came late with a limited amount of time to study the bill.

SEN. JOHN BOHLINGER said the system worked, so why try to fix it.

SEN. PETE EKEGREN stated that if you get away from the electoral college, then you get away from protecting Montana. He added that it was easy for the legislators from larger towns because their districts were represented in the initiative process, but he was concerned about the representation from the rural areas or smaller towns. SEN. EKEGREN said the present system did not need the small towns for the initiative process and he wanted them to be represented also. He said there was nothing wrong with attempting to protect the smaller towns.

SEN. BOHLINGER said the process was difficult and cumbersome, so the people should be able to go to areas with larger concentrations of people to get the votes for the initiatives.

SEN. EKEGREN said if the process was cumbersome, that's ok as long as the rural people and smaller towns were represented too.

SEN. BOHLINGER told the committee that once the initiative had qualified for the ballot, then it was submitted to all the voters in the state of Montana. The rural areas would have an opportunity to vote on the issue then.

SEN. EKEGREN asked the committee why should the population in eastern Montana be ignored to get to that point? Why shouldn't they be included in the whole process? SEN. EKEGREN told SEN. BOHLINGER that they would agree to disagree.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON HUMAN SERVICES**

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 26, 2001 at
3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 315, SB 461, SB 473, SB 454
SB 466, 3/22/2001
Executive Action: SB 329, SB 420, SB 477, SB
248, SB 454, SB 473, SB 315,
SB 461, SB 466

EXECUTIVE ACTION ON SB 329

question of informed consent is already in law and we do not need duplication. {Tape : 1; Side : B; Approx. Time Counter : 14.6 - 19.6}

Jerry Loendorf, MT Medical Assn. We wish to oppose this bill. {Tape : 1; Side : B; Approx. Time Counter : 19.6 - 23.1}

Questions from Committee Members and Responses: Rep. Facey: Dr. McEvoy, do you know if any other states have informed consent for this specific surgery? Dr. McEvoy: I do not know. Rep. Facey: Ms. Goethle, the same question. Ms. Goethle: I am aware that New York, Texas and California have informed written consent.

Rep. Shockley: Sen. Franklin, what was the reason behind this, an incident? Sen. Franklin: It is a constituent request. {Tape : 1; Side : B; Approx. Time Counter : 20.5 - 24.7}

Closing by Sponsor: Senator Franklin closed. Thank you for your attention to this issue. Dr. McMahon asked the Senate to amend this bill, which they did. {Tape : 1; Side : B; Approx. Time Counter : 24.7 - 27.5}

HEARING ON SB 473

Sponsor: Sen. Waterman, SD 26

Proponents: Gene Haire, Board of Visitors
Dr. Gary Mihelish, Alliance for Mentally Ill
Colleen Murphy, Natl Assn. Of Social Workers
Bonnie Adee, Mental Health Ombudsmen

Opponents: None

Opening Statement by Sponsor: Sen. Waterman introduced SB 473. This bill makes revisions to the Board of Visitors statutes. It expands the number of board members from five to six members, defines the criteria for the members, and sets two year staggered terms. It outlines the responsibilities of the board to inspect mental health facilities, it requires that facilities respond to the Board of Visitors recommendations and requires notification of public meetings. EXHIBIT(5)EXHIBIT(6){Tape : 1; Side : B; Approx. Time Counter : 27.5 - 30} {Tape : 2; Side : A; Approx. Time Counter : 0 - 0.2}

Proponents' Testimony: Gene Haire, Board of Visitor member. The Board of Visitors is a small state agency administratively attached to the Governor's office. The mandates are 53-20 and 53-21 of the MCA. Our duties are on-site reviews of mental health facilities

and to work with consumers to resolve disagreements with these types of facilities. Mr. Harrah explained the contents of the bill and the reasons for these changes. {Tape : 2; Side : A; Approx. Time Counter : 0.1 - 7.1}

Dr. Gary Mihelish, Pres of the National Alliance for the Mentally Ill for the State of Montana. We support this bill. {Tape : 2; Side : A; Approx. Time Counter : 7.1 - 7.3}

Colleen Murhpy, Ex. Dir. Of MT Chap. Natl Assoc. of Social Workers We want to go on the record in support of this bill. One of our members served on this board for a number of years and feels this board is very efficient and needed. {Tape : 2; Side : A; Approx. Time Counter : 7.3 - 7.9}

Bonnie Adee, Mental Health Ombudsmen, State of Montana. Our office is located next to this board. {Tape : 2; Side : A; Approx. Time Counter : 7.9 - 8.6}

Opponents' Testimony: None.

Questions from Committee Members and Responses: Rep. Esp: Mr. Haire, I have a question about the Board of Visitors and how it interacts with the State hospital. In a community setting there is a board that hires an administrator, then have monthly meetings to administer the agency. Is this the function of the Board of Visitors? Mr. Haire: The Board consists of five members appointed by governor. The Board is responsible for hiring the staff, which includes myself and three other staff members. Our by-laws require one meeting a year. Rep. Esp: As you oversee the daily operations of a facility, who has direct oversight? Mr. Haire: You are referring to the State Hospital? The Board is required by state law to employ a full time attorney and other staff. There are some duties to represent patients, medicaid patients, etc. We do not provide direct oversight. Rep. Esp: Who would be in charge of staff recruitment and peer review at the State hospital? Mr. Haire: The administrator of the medical services is the director.

Rep. Rice: Dr. Mihelish, Page two, lines one through 4 describes the new person guidelines? Explain, why are consumers included in this and what benefit are they to the board? Dr. Mihelish: The consumers have been disappointed and feel they have been excluded from the system. They need to be represented.

Rep. Brown: Dr. Harr, are you familiar with this bill. What is your position on this bill. Dr. Harr; I am interested in this bill and do support it. The Board of Visitors have a valuable position and duties to carry out. Rep. Brown; Could you answer Rep. Rice

question regarding having more consumers on this board. **Dr. Harr:** I think the consumer has been ignored for too long and there is a value in having a consumer on this board. {Tape : 2; Side : A; Approx. Time Counter : 8.6 - 20.9}

Closing by Sponsor: Sen. Waterman closed this bill with a short review of the proponents comments. {Tape : 2; Side : A; Approx. Time Counter : 20.9 - 21.5}

HEARING ON SB 454

Sponsor: Sen. Waterman, SD 26

Proponents: Dan Anderson, DPPHS

Jani McCall, MT Assn. Home Health Services Children.
Denise Griffith, Intermountain Childrens Home
Dr. Harr, psychologist
Ira Lourie, Med. Dir of "AWARE"
Jonette McFadden, Great Falls
Bonnie Adee, Ombudsman, Governors Office
Steve Yeakel, MT Council Maternal and Child Health
Mona Jamison, Shodair
John Wilkerson, CEO of Intermountain Childrens Home
Colleen Murphy, MT Chap. Social Workers
Robert Runkel, Office of Public Instruction
Sami Butler, MT Nurses Assn
Christie Blazer, Childrens Comprehensive Services
Mike Ferritter, Dept of Corrections
Al Davis, Mental Health Assn
Gene Haire, Board of Visitors

Opponents: None

Opening Statement by Sponsor: Sen. Waterman opens SB 454. This is an overview of the next two bills. These two bills deal with moving from a for-profit managed system that did not pay their bills two years to a system where the providers get paid, but we are losing 21 million dollars a biennium. We have many patients in high cost out of community treatment facilities. We should consider moving to a regional system and move the high cost individuals in state to save the money. We could use the savings to implement the regional system. EXHIBIT(7){Tape : 2; Side : A; Approx. Time Counter : 21.5 - 29.1}

Proponents' Testimony: Dan Anderson, DPPHS. The challenge in providing services for the mentally ill in a community based system is complex. It involves several agencies: schools, protective

Amendments to Senate Bill No. 473
3rd Reading Copy

845
3/26/01
LB 473

Requested by Senator Mignon Waterman

For the House Human Services Committee

Prepared by Susan Byorth Fox
March 21, 2001 (10:31AM)

1. Title, line 5.

Following: "VISITORS;"

Insert: "PROVIDING DEFINITIONS;"

2. Title, line 11.

Following: "2-15-211"

Insert: ", 53-21-102,"

3. Page 2, line 22.

Following: line 21

Insert: "Section 2. Section 53-21-102, MCA, is amended to read:

"53-21-102. **Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

~~(1)~~(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

~~(2)~~(3) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

~~(3)~~(4) "Court" means any district court of the state of Montana.

~~(4)~~(5) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~(6) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(6)~~(7) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the

person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(7)~~(8) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

- (a) addiction to drugs or alcohol;
- (b) drug or alcohol intoxication;
- (c) mental retardation; or
- (d) epilepsy.

~~(8)~~(9) "Mental health facility" or "facility" means a ~~public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department~~ the state hospital, the Montana mental health nursing care center, or a hospital, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(10) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(9)~~(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(10)~~(12) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(11)~~(13) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(12)~~(14) "Professional person" means:

- (a) a medical doctor; or
- (b) a person who has been certified, as provided for in

53-21-106, by the department.

~~(13)~~(15) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(14)~~(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(15)~~(17) "State hospital" means the Montana state hospital."

{ Internal References to 53-21-102:

41-5-1504	41-5-1504	41-5-1504	41-5-1512
41-5-1512	45-5-206	53-20-130	53-21-105
53-21-106	53-21-106	53-21-138	53-21-411
53-21-601	72-5-408	72-5-415 }	

Renumber: subsequent sections

4. Page 3, line 19.

Following: "report"

Insert: "within 30 calendar days of the completion of each mental health facility inspection"

5. Page 4, line 1.

Following: "not"

Insert: "either"

Following: "recommendations"

Insert: "or provided a specific rationale that explains why any recommendations cannot be implemented"

6. Page 4, line 7.

Following: "shall"

Insert: "review all aspects of the treatment of persons admitted to mental health facilities and"

Strike: "special"

Following: "procedures"

Insert: "that involve behavior control"

Following: "of"

Insert: "any type of"

7. Page 4, line 8.

Following: "seclusion"

Insert: "or isolation"

8. Page 4, line 10.

Strike: "special"

Following: "procedures"

Insert: "described in subsection (4) (b) "

9. Page 4, line 17.

Strike: "special"

Following: "procedures"

Insert: "described in subsection (4)(b)"

10. Page 5, line 8.

Following: line 7

Insert: "(8) The board shall publish standards for its inspections of mental health facilities."

Renumber: subsequent subsection

11. Page 5, line 17.

Strike: "mistreatment, neglect, or"

Following: "abuse"

Insert: "or neglect"

12. Page 5, line 19.

Following: line 18

Insert: "(2) Each mental health facility shall publish policies and procedures that define the facility's guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect."

Renumber: subsequent subsections

13. Page 5, line 19.

Strike: "mistreatment,"

Following: "abuse"

Strike: ", "

14. Page 5, line 22 and line 23.

Following: "allegation"

Strike: remainder of line 22 through "hours" on line 23

Insert: "by the end of the next business day"

15. Page 5, line 24.

Strike: "mistreatment,"

Following: "abuse"

Strike: ", "

16. Page 5, line 27.
Strike: "mistreatment,"

17. Page 5, line 28.
Following: "abuse"
Strike: ", "

18. Page 5, line 29.
Strike: "mistreatment,"
Following: "abuse"
Strike: ", "

19. Page 5, line 30..
Strike: "within 24 hours of"
Insert: "as soon as possible after"
Following: "incident"
Insert: ", but not later than by the end of the next business
day. Initiation of each investigation may not be delayed in
any way that adversely affects the efficacy of the
investigation"

20. Page 6, line 2.
Strike: "mistreatment,"
Following: "abuse"
Strike: ", "

21. Page 6, line 3.
Strike: "10 working days of"
Insert: "the minimum period of time necessary to gather the
information relative to each allegation and to come to a
conclusion following"

22. Page 6, line 5.
Strike: "mistreatment,"
Following: "abuse"
Strike: ", "

23. Page 6, line 6.
Strike: "mistreatment,"
Following: "abuse"
Strike: ", "

24. Page 6, line 10.
Strike: "mistreatment,"
Following: "abuse"
Strike: ", "

25. Page 6, line 13.
Strike: "(6)(a)"
Insert: "(7)(a)"

26. Page 6, line 14.
Strike: "(6)(e)"
Insert: "(7)(e)"

27. Page 6, line 17.
Strike: "3"
Insert: "4"

28. Page 6, line 19.
Strike: "3"
Insert: "4"

- END -

OP 6
3/26/01
SB 473

Michelle J. Maltese
1926 Argyle
Butte, MT 59701

March 24, 2001

Re: SB 473—Bill revising the statutes related to the Mental Disabilities Board
of Visitors

Legislative Members:

The purpose of this letter is to voice opposition to Section 1 of SB 473, regarding the membership of the board members of the Mental Disabilities Board of Visitors (BOV).

I was employed as an attorney with BOV from September, 1995, to August, 1999. I worked at BOV's Warm Springs office representing the patients at the Montana State Hospital. My experience with BOV serves as the basis of my objection.

Section 1 proposes to increase the board membership from five to six members, and provides for a two-year terms on the membership. These changes may lead to BOV's inefficiency when tackling mental health and developmental disability matters.

First, having an even number of board members can create tie votes on issues the board considers. I have witnessed this scenario first-hand while employed with BOV, when one board membership was vacant, and tie votes of two-to-two occurred. Who provides the tie-breaking vote? The proposed change in board members, as provided in Section 1, will only create deadlock on issues of mental health and developmental disability advocacy, and to be honest, there is no room for impasse when there are currently so many issues to be dealt with.

It also creates accountability problems. The board serves as the supervisor of BOV's executive director. If tie votes occur, what kind of impetus will exist for the executive director to abide by the board's decisions?

Second, having two-year terms for members is unreasonable and vague. Is this mandating a term limit? Will there be a revolving door of members who must re-learn BOV issues every time? How does the term requirement affect current board members? Will it be applied retroactively? How will the current membership meet the "staggered terms"? Can a board membership be renewed after the two-year term expires? If so, who makes the decision to renew the membership?

Two-year terms can create much inexperience in an organization whose constituency are the consumers of mental health and developmental disability services. I don't believe there should be any room for that possibility. As I understand it, the board only conducts annual meetings, meaning a board member may only serve two meetings in a term. Not much may come out of those meetings in such a limited time. Furthermore, board members conduct site reviews of mental health and developmental disability facilities. Believe me, it is a complicated process, as I have served on four site reviews. BOV will have to continuously train new members to appropriately conduct these site reviews. That's totally inefficient. BOV's constituency deserve better.

It seems that Section 1 seeks to erode the board's powers when guiding BOV. Its effects will lead to less accountability and less consistency in decision making. It provides too much power for one state employee, the executive director. BOV should not be operated in a vacuum.

As I have said before, I write this letter out of my personal experience in working with BOV, and I have not talked to a single board member, past or presently serving, since I left BOV in 1999. I ask that you vote against Section 1 of SB 473.

Thank you for your consideration of this letter. If you have any questions, you may reach me at my cell phone number at 490-2189.

Sincerely,



Michelle J. Maltese

C: Sen. Mignon Waterman, Sponsor
Jeff Hindoien, Governor's Office

SB 440 **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Disclosure to consumers health care service cost participation requirements
REFERRED ON: 03/03/2001 **HEARD ON:** 03/23/2001
EXECUTIVE ACTION: 03/26/2001 - Bill Concurred -- **VOTE:** 18 - 0
FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

SB 442 **SPONSOR:** Cobb, John **SHORT TITLE:** Revolving fund for low-income working families
REFERRED ON: 03/03/2001 **HEARD ON:** 03/23/2001
EXECUTIVE ACTION: 03/26/2001 - Bill Concurred as Amended -- **VOTE:** 13 - 5
FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

SB 454 **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Multiagency initiative for hi-cost SED children cases
REFERRED ON: 03/03/2001 **HEARD ON:** 03/26/2001
EXECUTIVE ACTION: 03/27/2001 - Bill Concurred -- **VOTE:** 18 - 0
FINAL DISPOSITION: 04/28/2001 Chapter Number Assigned

SB 459 **SPONSOR:** Franklin, Eve **SHORT TITLE:** Allow APRNs to examine, report, and testify on defendant's mental condition
REFERRED ON: 03/03/2001 **HEARD ON:** 03/21/2001
EXECUTIVE ACTION: 03/22/2001 - Bill Concurred -- **VOTE:** 17 - 1
FINAL DISPOSITION: 04/20/2001 Chapter Number Assigned

SB 461 **SPONSOR:** Franklin, Eve **SHORT TITLE:** Informed consent for hysterectomy
REFERRED ON: 03/03/2001 **HEARD ON:** 03/26/2001
TABLED ON: 03/26/2001
FINAL DISPOSITION: 04/26/2001 (H) Died in Standing Committee

SB 466 **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Revise mental health commitment laws
REFERRED ON: 03/21/2001 **HEARD ON:** 03/26/2001
EXECUTIVE ACTION: 03/27/2001 - Bill Concurred as Amended -- **VOTE:** 17 - 1
FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

SB 473 **SPONSOR:** Waterman, Mignon **SHORT TITLE:** Revise Board of Visitors laws
REFERRED ON: 03/03/2001 **HEARD ON:** 03/26/2001
EXECUTIVE ACTION: 03/27/2001 - Bill Concurred as Amended -- **VOTE:** 18 - 0
FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 26, 2001 at
3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrupf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 315, SB 461, SB 473, SB 454
SB 466, 3/22/2001
Executive Action: SB 329, SB 420, SB 477, SB
248, SB 454, SB 473, SB 315,
SB 461, SB 466

EXECUTIVE ACTION ON SB 329

go ahead with peer review and does serve to protect the public. The doctors need to have the freedom to discuss problems that need to be fixed. **Rep. Jent:** the key words are admissible and discoverable. Admissible means it goes to the jury and discoverable it does not go to the jury. **Rep. Raser:** At school we tried various things for evaluation of staff. The confidential system worked best and people stopped talking when it was open discussion. I encourage this bill. **Rep. Raser** will carry this bill on the house floor. {Tape : 4; Side : B; Approx. Time Counter : 8.2 - 21.5}

EXECUTIVE ACTION ON SB 454

Motion/Vote: REP. SHOCKLEY moved that SB 454 BE CONCURRED IN. Motion carried unanimously. Rep. Lee will carry on the house floor. {Tape : 4; Side : B; Approx. Time Counter : 21.5 - 25.2}

Discussion: Rep. Lee: I think this is a good bill. Rep. Ripley: Would one of the lawyers explain the bill. Rep. Newman: I don't think there is a concern with conflicting with another bill. The legal staff can correct and combine like bills. Rep. Brown: I asked that question during the hearing and she said yes it had.

EXECUTIVE ACTION ON SB 473

Motion/Vote: REP. JENT moved that SB 473 BE CONCURRED IN.

Motion/Vote: REP. NOENNIG moved that SB 473 BE AMENDED. Motion carried unanimously.

Discussion: Rep. Noennig: These are technical amendments and does not change the context of the bill. Rep. Jent: This amendment address and corrects the definitions, I think we need this amendment.

Motion: REP. NOENNIG moved that SB 473 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. RICE moved that SB 473 BE AMENDED. Motion failed 9-9 with Dell, Facey, Himmelberger, Jent, Noennig, Raser, Schmidt, Schrumpf, and Thomas voting no.

Discussion: Rep. Rice: This is a conceptual amendment on Page 1, line 18 to change it from 6 back to 5. On page 2, strike either subsection 4 or 5. We only need one consumer on the board. I don't know which would be applicable. I will chose subsection 5 be deleted. Rep. Raser: What is this amendment doing? Rep. Noennig: Says that this amendment will only save the travel expenses of one

person. This will not narrow the definition of mental illness. **Rep. Shockley:** I do not think we need to make this amendment. **Rep. Raser:** This is a mental disabilities bill, this does not talk about mental illness. **Rep. Brown:** If you change that to 5, they only have the criteria to 5 people only. **Rep. Rice:** I withdraw all of the amendment except changing the number of members from 6 to five.

Motion/Vote: REP. NOENNIG moved that SB 473 BE CONCURRED IN AS AMENDED. Motion carried unanimously. Rep. Jent Will carry this bill on the house floor. {Tape : 4; Side : B; Approx. Time Counter : 25.2 - 30} {Tape : 5; Side : A; Approx. Time Counter : 0 - 11.1}

EXECUTIVE ACTION ON SB 315

Motion: REP. JENT moved that SB 315 BE CONCURRED IN.

Discussion: Rep. Esp, what is this bill. **Rep. Raser:** This is good policy, we know that one of major problems is affordable health care for Montanans. **Rep. Shockley:** I suggest we pass this bill on to the floor and let the full house address the money issue. **Rep. Noennig:** I don't think is for low income people, it is for high risk medical needs. They are charged for this insurance and there is no assistance. Is the two million dollars a result of the sliding scale. **Rep. Shockley:** I don't have the answer, we either send it out of here or we don't. If Steve Vick says the money is there then ok, if not forget it. **Rep. Schmidt:** This money will let MCHA reduce premiums by using the sliding scale for low income people who qualify for this coverage and can not afford it.

Motion/Vote: REP. JENT moved that SB 473 BE CONCURRED IN. Motion carried 13-5 with Esp, Fuchs, Raser, Rice, and Ripley voting no. Rep. Lee to carry on the house floor. {Tape : 5; Side : A; Approx. Time Counter : 11.1 - 22.4}

EXECUTIVE ACTION ON SB 461

Motion: REP. RIPLEY moved that SB 461 BE CONCURRED IN.

Discussion: Rep. Newman, Informed consent is already the law and this proposal is unnecessary. If we do this it will set a precedence.

Substitute Motion/Vote: REP. ESP moved that SB 461 BE TABLED. Motion carried 17-1. Ripley voting no. {Tape : 5; Side : A; Approx. Time Counter : 22.4 - 24.6}

HOUSE OF REPRESENTATIVE
ROLL CALL

HEALTH AND HUMAN SERVICES COMMITTEE

DATE 3/24/01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. BILL THOMAS, CHAIR	✓		
REP. ROY BROWN, V.C.	✓		
REP. TRUDI SCHMIDT, V.C.	✓		
REP. TOM DELL	✓		
REP. TOM FACEY	✓		
REP. D. HEMMELBERGER	✓		
REP. MICHELLE LEE	✓		
REP. MARK NOENNIG	✓		
REP. DIANE RICE	✓		
REP. CLARICE SCHRUMPF	✓		
REP. JAMES WHITAKER	✓		
REP. JOHN ESP	✓		
REP. DANIEL FUCHS	✓		EX
REP. LARRY JENT	✓		
REP. BRAD NEWMAN	✓		
REP. HOLLY RASER	✓		
REP. RICK RIPLEY	✓		
REP. JIM SHOCKLEY	✓		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HEALTH AND HUMAN SERVICES COMMITTEE

DATE 3/26 Bill NO. 473 NUMBER _____

MOTION: Issue Amendment 9-9

Name	AYE	NO
REP. BILL THOMAS, CHAIRMAN		X
REP. ROY BROWN, V C MAJORITY	X	
REP. TRUDI SCHMIDT, V C MINORITY		X
REP. TOM DELL		X
REP. TOM FACEY		X
REP. DENNIS HIMMELBERGER		X
REP. MICHELLE LEE	X	
REP. CLARICE SCHRUMPF		X
REP. JAMES WHITAKER	X	
REP. JOHN ESP	X	
REP. DANIEL FUCHS	X	
REP. LARRY JENT		X
REP. HOLLY RASER		X
REP. BRAD NEWMAN	X	
REP. MARK NOENNIG		X
REP. RICK RIPLEY	X	
REP. DIANE RICE	X	
REP. JIM SHOCKLEY	X	



HOUSE STANDING COMMITTEE REPORT

March 27, 2001

Page 1 of 6

Mr. Speaker:

We, your committee on Human Services recommend that Senate Bill 473 (third reading copy

- blue) be concurred in as amended.

Signed:

[Signature]
Representative Bill Thomas, Chair

To be carried by Representative Larry Jent

And, that such amendments read:

1. Title, line 5.

Following: "VISITORS;"

Insert: "PROVIDING DEFINITIONS;"

2. Title, line 11.

Following: "2-15-211"

Insert: ", 53-21-102,"

3. Page 2, line 22.

Following: line 21

Insert: "Section 2. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(3) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(4) "Court" means any district court of the state of Montana.

Committee Vote:

Yes 18, No 0.

691349SC.hdc

3/27

2 pm

mp

~~(4)~~(5) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~(6) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(6)~~(7) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(7)~~(8) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

- (a) addiction to drugs or alcohol;
- (b) drug or alcohol intoxication;
- (c) mental retardation; or
- (d) epilepsy.

~~(8)~~(9) "Mental health facility" or "facility" means a ~~public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department~~ the state hospital, the Montana mental health nursing care center, or a hospital, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(10) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(9)~~(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters

of a person.

~~(10)~~(12) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(11)~~(13) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(12)~~(14) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

~~(13)~~(15) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(14)~~(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(15)~~(17) "State hospital" means the Montana state hospital."

Renumber: subsequent sections

4. Page 3, line 19.

Following: "report"

Insert: "within 30 calendar days of the completion of each mental health facility inspection"

5. Page 4, line 1.

Following: "not"

Insert: "either"

Following: "recommendations"

Insert: "or provided a specific rationale that explains why any recommendations cannot be implemented"

6. Page 4, line 7.

Following: "shall"

Insert: "review all aspects of the treatment of persons admitted to mental health facilities and"

Strike: "special"

Following: "procedures"

Insert: "that involve behavior control"

Following: "of"

Insert: "any type of"

7. Page 4, line 8.

Following: "seclusion"

Insert: "or isolation"

8. Page 4, line 10.

Strike: "special"

Following: "procedures"

Insert: "described in subsection (4) (b) "

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9. Page 4, line 17.

Strike: "special"

Following: "procedures"

Insert: "described in subsection (4)(b)"

10. Page 5, line 8.

Following: line 7

Insert: "(8) The board shall publish standards for its inspections of mental health facilities."

Renumber: subsequent subsection

11. Page 5, line 17.

Strike: "mistreatment, neglect, or"

Following: "abuse"

Insert: "or neglect"

12. Page 5, line 19.

Following: line 18

Insert: "(2) Each mental health facility shall publish policies and procedures that define the facility's guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect."

Renumber: subsequent subsections

13. Page 5, line 19.

Strike: "mistreatment,"

Following: "abuse"

Strike: ", "

14. Page 5, line 22 and line 23.

Following: "allegation"

Strike: remainder of line 22 through "hours" on line 23

Insert: "by the end of the next business day"

15. Page 5, line 24.

Strike: "mistreatment,"

Following: "abuse"

Strike: ", "

16. Page 5, line 27.

Strike: "mistreatment,"

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17. Page 5, line 28.

Following: "abuse"

Strike: ", "

18. Page 5, line 29.

Strike: "mistreatment, "

Following: "abuse"

Strike: ", "

19. Page 5, line 30.

Strike: "within 24 hours of"

Insert: "as soon as possible after"

Following: "incident"

Insert: ", but not later than by the end of the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the efficacy of the investigation"

20. Page 6, line 2.

Strike: "mistreatment, "

Following: "abuse"

Strike: ", "

21. Page 6, line 3.

Strike: "10 working days of"

Insert: "the minimum period of time necessary to gather the information relative to each allegation and to come to a conclusion following"

22. Page 6, line 5.

Strike: "mistreatment, "

Following: "abuse"

Strike: ", "

23. Page 6, line 6.

Strike: "mistreatment, "

Following: "abuse"

Strike: ", "

24. Page 6, line 10.

Strike: "mistreatment, "

Following: "abuse"

Strike: ", "

25. Page 6, line 13.

Strike: "(6)(a)"

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Insert: "(7)(a)"

26. Page 6, line 14.
Strike: "(6)(e)"
Insert: "(7)(e)"

27. Page 6, line 17.
Strike: "3"
Insert: "4"

28. Page 6, line 19.
Strike: "3"
Insert: "4"

- END -

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COMMITTEE PROXY

DATE 3/24/01*Human Services*

I request to be excused from the **HOUSE STATE ADMINISTRATION COMMITTEE** Committee meeting this date because of other commitments. I desire to leave my proxy vote with Tim Facey or Holly Raser

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT AYE NO

SENATE BILL/AMENDMENT AYE NO

All bills, amend-		
ments & executive		
action -		

SB 420	X	
SB047701.adn	X	
SB047702.adn	X	
SB047701.asf	X	
Exp amd.		X
SB#77	X	
Rac amd. 473		X
SB 473	X	
SB315	X	
SB 461 Table	X	
SB466	X	

Rep. Jan Bell

(Signature)

S:\HOUSE STATE ADMIN FORMS\committee proxy.frm

COMMITTEE PROXY

DATE 3/4/01I request to be excused from the HOUSE HEALTH AND HUMAN SERVICESCommittee meeting this date because of other commitments. I desire to leave my proxy vote with Tom Faley or Kelly Rose

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT AYE NO

SENATE BILL/AMENDMENT AYE NO

*All other amendments
YES*

SB 315	yes	
SB 454	yes	
SB 473	yes	
SB 461 ?		
SB 248		

SB 420	X	
SB 47701.adn	X	
SB 47702.adn	X	
SB 47701.asf	X	
Exp amd.		X
SB 477	X	

Rep. Judi Schmitt

(Signature)

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**MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
HEALTH AND HUMAN SERVICES**

DATE 3/26/01

BILL NO. 88473

SPONSOR(S) Wakeman

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

<u>P</u> 01	<u>Donald Harr</u>	<u>3010 Wendimere Lane</u> <u>Billings 59102</u>	<u>Mt. Psychiatric Ass'n</u>
<u>P</u> 01	<u>Sami Butten</u>	<u>Helena</u>	<u>MNA</u>
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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AN ACT REVISING THE STATUTES RELATING TO THE MENTAL DISABILITIES BOARD OF VISITORS; PROVIDING DEFINITIONS; INCREASING THE MEMBERSHIP OF THE BOARD AND SPECIFYING REQUIREMENTS FOR MEMBERSHIP; STAGGERING TERMS OF BOARD MEMBERS; REQUIRING THE BOARD TO ADOPT FACILITY INSPECTION SCHEDULES; PROVIDING THAT BOARD INSPECTIONS MAY NOT BE PRECLUDED BY OTHER LICENSING OR ACCREDITATION PROCESSES; PROHIBITING ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; PROVIDING FOR REPORTING AND INVESTIGATING ALLEGATIONS OF ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTIONS 2-15-211, 53-21-102, AND 53-21-104, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-211, MCA, is amended to read:

"2-15-211. Mental disabilities board of visitors -- composition -- allocation. (1) The governor shall appoint a mental disabilities board of visitors.

(2) (a) The board shall consist of five ~~six~~ persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom must be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or persons with developmental disabilities: who possess qualifications necessary to carry out the responsibilities of the board defined in 53-20-104 and 53-21-104.

(b) The members of the board must meet the following requirements:

(i) one person must possess skills, knowledge, and experience relative to the treatment and welfare of adults with serious disabling mental illnesses;

(ii) one person must possess skills, knowledge, and experience relative to the treatment and welfare of children with serious emotional disturbances;

(iii) one person must possess skills, knowledge, and experience relative to the treatment and

welfare of adults with developmental disabilities;

(iv) one person must be a consumer of mental health services or a family member of a consumer of mental health services; and

(v) one person must be a consumer of developmental disabilities services or a family member of a person with developmental disabilities.

(c) The members of the board must also meet the following requirements:

(i) at least one board member must be a professional person in the field of mental health treatment;

(ii) at least one board member must be a professional person in the field of developmental disabilities treatment; and

(iii) no more than three board members may be professional persons in the fields of mental health treatment and developmental disabilities treatment.

(d) ~~No one may be a~~ A member of the board ~~who is~~ may not be a full-time agent or employee of the department of public health and human services or a mental health facility affected by Title 53, chapter 20, part 1, and Title 53, chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(e) Board members serve for 2-year terms. The terms are staggered so that one-half of the terms expire June 30 of each year.

(3) The mental disabilities board of visitors is attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and Title 53, chapter 21, part 1."

Section 2. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

~~(1)~~(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of

visitors created by 2-15-211.

~~(2)~~(3) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

~~(3)~~(4) "Court" means any district court of the state of Montana.

~~(4)~~(5) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~(6) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(6)~~(7) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(7)~~(8) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

- (a) addiction to drugs or alcohol;
- (b) drug or alcohol intoxication;
- (c) mental retardation; or
- (d) epilepsy.

~~(8)~~(9) "Mental health facility" or "facility" means ~~a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department~~ the state hospital, the Montana mental health nursing care center, or a hospital, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that

provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(10) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(9)~~(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(10)~~(12) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(11)~~(13) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(12)~~(14) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

~~(13)~~(15) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(14)~~(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(15)~~(17) "State hospital" means the Montana state hospital."

Section 3. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review ~~to assure that is responsible to ensure~~ that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility in Montana is humane ~~and decent,~~

is consistent with established clinical and other professional standards, and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to ~~assure~~ ensure that ~~the~~ each research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, ~~education, and welfare~~ and human services. An activity considered to be an experimental research project involving and that involves a person or persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) (a) The board shall at least annually inspect every mental health facility which is providing that provides treatment and or evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(b) The board shall annually establish a schedule for the inspection of mental health facilities that enables the board to meet its obligation under subsection (1).

(c) The board's authority to inspect mental health facilities may not be waived or precluded by other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

(d) The board shall produce a written report of each inspection of a mental health facility that must include specific recommendations for improvements that the board concludes are necessary in order for the inspected facility to meet the requirements in this part.

(e) The board shall provide a draft of each written report within 30 calendar days of the completion of each mental health facility inspection to the professional person in charge of the inspected facility for review prior to publication.

(f) The professional person in charge of the inspected facility shall provide a written response to the board's written report within 30 calendar days of receipt of the report. The response must include one

of the following for each recommendation:

- (i) a specific plan for implementation of the recommended action; or
- (ii) a specific rationale that explains why the recommendation cannot be implemented.
- (g) The board shall include the inspected facility's written response in the board's final published written report.
- (h) The board shall include in subsequent inspections an assessment of each facility's implementation of the recommendations.
- (i) The board shall report in writing to the director of the department and the governor when it determines that a mental health facility has not either implemented written recommendations or provided a specific rationale that explains why any recommendations cannot be implemented.
- (4) (a) The board shall annually insure, by applying a sampling process during a scheduled inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists and is being implemented for each patient admitted or committed to a mental health facility being inspected under this part.
- (b) The board shall inquire concerning all, during a scheduled inspection of a mental health facility, shall review all aspects of the treatment of persons admitted to mental health facilities and review the use of treatment procedures that involve behavior control, including but not limited to the use of any type of mechanical restraints, isolation, or other extraordinary measures: locked and unlocked seclusion or isolation, time out, or any other procedure involving physical control.
- (c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental health professionals, is implemented only when other less restrictive measures have failed, and is implemented to the least extent necessary to protect the safety and health of the affected individual or others in the immediate environment.
- (d) The board may exercise the prerogative to inquire about and ensure the existence and implementation of treatment plans and discharge plans for any person admitted to a mental health facility and to inquire about and ensure the appropriate use of treatment procedures described in subsection (4)(b) with any person admitted to a mental health facility independent of its facility inspection schedule.
- (5) The board may assist any patient person who is receiving or who has received treatment at

a mental health facility in resolving any grievance the patient person may have concerning the patient's commitment person's admission or course of treatment in the facility.

(6) The board shall employ and ~~be~~ is responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the ~~institution~~ state hospital. The board shall ~~insure~~ ensure that there ~~is~~ are sufficient legal staff and facilities to ~~insure~~ ensure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) (a) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient person, it shall report its findings ~~at once~~ in writing to the professional person in charge of the facility and the director of the department, ~~and if appropriate, after waiting a reasonable time for a response from the professional person,~~

(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days that includes a specific plan to implement corrective action.

(c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working days of the written notice provided for in subsection (7)(a), the board may shall notify the next of kin or guardian of any patient person involved, the friend of respondent appointed by the court for any patient person involved, ~~and the district court which that~~ has jurisdiction over the facility, and the governor.

(8) The board shall publish standards for its inspections of mental health facilities.

~~(8)~~ (9) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs ~~which that~~ it has inspected since the last annual report; and

(b) occurrences of the administration of medications involuntarily administered to patients against the wishes of persons receiving treatment in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients persons from unnecessary or excessive medication."

Section 4. Abuse and neglect of persons admitted to mental health facility prohibited -- reporting -- investigations. (1) Any form of abuse or neglect of a person admitted to a mental health facility is

prohibited.

(2) Each mental health facility shall publish policies and procedures that define the facility's guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect.

(3) Each allegation of abuse or neglect must be reported as follows:

(a) Any employee of the mental health facility with knowledge of the allegation shall immediately report the allegation to the professional person in charge of the facility.

(b) The professional person in charge of the mental health facility shall report the allegation by the end of the next business day, in writing, to the board.

(c) When the allegation of abuse or neglect may constitute a criminal act, the professional person in charge of the mental health facility shall immediately report the allegation to the appropriate law enforcement authority.

(4) Each mental health facility shall provide a mechanism for reporting allegations of abuse or neglect that in no way deters or discourages an individual from reporting the allegations.

(5) Investigations of allegations of abuse or neglect must be initiated by the professional person in charge of the facility as soon as possible after the initial report of the incident, but not later than by the end of the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the efficacy of the investigation. However, the investigation must be initiated immediately when there is a report of an alleged criminal act.

(6) The investigation of each allegation of abuse or neglect must be concluded within the minimum period of time necessary to gather the information relative to each allegation and to come to a conclusion following the initial report of the allegation.

(7) Each mental health facility shall document the following in writing regarding each allegation of abuse or neglect:

(a) details of each allegation of abuse or neglect, including the names of any facility staff against whom the allegation is made;

(b) a description of the rationale for conducting the investigation with either in-house or outside personnel;

(c) details of the process of the investigation of each allegation of abuse or neglect;

(d) details of the conclusions of the investigation; and

(e) details of corrective action taken.

(8) Mental health facilities shall provide a copy of the written report described in subsections (7)(a) through (7)(e) within 5 working days of the completion of each investigation to the director of the department and to the board.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 4].

- END -